

PIL 13/2007

BEFORE

HON'BLE THE CHIEF JUSTICE MR.JASTI CHELAMESWAR

THE HON'BLE MR. JUSTICE HRISHIKESH ROY

Hrishikesh Roy, J.

Heard Mr. T.C. Khatri, learned senior counsel appearing for the petitioner. Also heard Ms. B. Goyal, learned Government Advocate appearing for the respondents.

2. This petition styled as a Public Interest Litigation (PIL) has been filed to challenge the requirement of production of No Objection Certificate from Deputy Commissioner/Sub-Divisional Officers and from the Development Authorities under the Town and Country Planning Act, before the registering authority as a pre-condition for registration of documents such as sale deeds, required to be registered under the provisions of the Registration Act, 1908, hereinafter referred to as the Registration Act. It is contended that in so far as registration of documents are concerned, the same are to be dealt with under the provisions of the Registration Act and once the requirement of Registration Act are fulfilled, there could be no objection to registration of registerable documents on the ground of non-availability of No Objection Certificate from the aforementioned authorities.

3. It is contended by Mr. T.C. Khatri, the learned counsel for the petitioner that Registrar/Sub-Registrar under the Registration Act functions as a statutory authority and are obliged to act in accordance with the requirement of the Registration Act. Therefore, Executive Instructions issued by the Government of Assam compelling such Registering Authorities to insist on furnishing of No Objection Certificate prior to registration of sale deeds for immovable properties, is contrary to law and such insistence is not in consonance with the requirements of the Registration Act.

The learned counsel has referred to the communication dated 29.7.2004 issued by the Inspector General of Registration, Assam (Annexure-A) to the Commissioner and Secretary to the Government of Assam, Revenue (Registration) Department, Dispur, Guwahati, wherein it is reflected that refusal to register a sale deed can be made only under the provisions laid down under the Registration Act and the requirement insisted through Executive Instructions for obtaining of No Objection Certificate from various revenue authorities cannot override the provisions of the Registration Act. Accordingly, it is reflected in the said communication dated 29.7.2004 that the D.C's/S.D.O.'s are compelling the registration authorities to act against the provisions of law.

4. Ms. B. Goyal, learned Government Advocate appearing for the official Respondents submits that the Government of Assam has issued instructions placing restriction on Registration of documents pertaining to transfer of immovable properties, without a No Objection Certificate from the revenue authorities of the District or the Sub-Divisions to prevent, inter alia, transfer of agricultural land to non-farmers; to restrict a foreign national from acquiring landed property; to check benami transfer of immovable properties. The learned counsel also contends that the Assam Government is contemplating amendment of the provisions of the Registration Act to regularize the Government Policies already introduced by the Assam Government requiring obtaining of the aforesaid No Objection Certificate. It is further contended that the Government of Assam has not issued any instructions requiring a No Objection Certificate from the development authority constituted under the Town and Country Planning Act for registering of any Registration Deeds by the Registering Authorities.

The learned Government Advocate referred to the provisions of Se

ction 84(2) of the Indian Registration Act to show that insistence on No Objection Certificate is in consonance with the provisions of law which require every person to furnish information to the registering authority when required.

5. Section 17 of the Registration Act indicates the documents which are required to be compulsorily registered. Sale deeds of immovable properties are compulsorily registerable documents.

A Registering Authority under Section 71(1) of the Registration Act while refusing to register a particular document is required to record reasons for refusing to register a particular document.

An appeal under Section 72 is provided to the Registrar from an order of refusal to register a document by the Sub-Registrar.

6. On close examination of the provisions as indicated aforesaid and other provisions of the Registration Act, we do not find anything which provides for obtaining of a No Objection Certificate from the revenue authorities prior to registration of a Sale Deed by the Registering authority.

7. The learned counsel appearing for the petitioner has referred to the decision in J.D. Pathak, Petitioner -Vs.- V.B. Barot and another, Respondents, reported in AIR 1982 Gujrat 317 to contend that once the requirement of the Act is fulfilled, the Registering authority is to register a document or pass an order refusing registration by recording reasons.

The decision reported in (i) Kailash and others, Vs.- Sub-Registrar of Assurances, Indore and another, reported in AIR 1985 Madhya Pradesh 12 and (ii) Bihar Deed Writers Association and others -Vs.- State of Bihar and others, reported in AIR 1989 Patna 144, have been cited to submit that when the requirement of the Registration Act are fulfilled and a document is presented for registration, the same has to be registered and instructions or directions issued by the Government having no foundation in law, cannot be taken into account by the registering authority to refuse registration.

The Supreme Court decision in State of Rajasthan and others -Vs.- Basant Nahata appearing in (2005) 12 SCC 77 has also been cited on behalf of the petitioner to show that in the absence of any substantive provision contained in the Registration Act, (in the context of power of attorney given by the title holder of the land) interdicting a title holder of immovable property to deal with his property, is opposed to one's right of property as envisaged under Article 300-A of the Constitution.

8. By citing the aforesaid decisions, the learned counsel for the petitioner contends that the Executive Instructions issued by the Government of Assam which are not supported by the provisions of the Registration Act, cannot be made the basis to insist on obtaining of No Objection Certificate prior to registration of sale documents by the registering authority under the Registration Act.

9. It appears from the provisions of the Act as well as the submissions made that the requirement of obtaining a No Objection Certificate prior to the registration of sale deed, is not in consonance with the provisions of the Registration Act. The said requirement has been introduced by the Government of Assam through executive instructions and it is specifically averred in the counter affidavit filed on behalf of the State that necessary amendments in the Registration Act are being contemplated, to take care of the requirement of obtaining of No Objection Certificate, which is being insisted upon in larger public interest.

10. From above, it is apparent that the State Government is also aware that the impugned requirement is not supported by the Registration Act and the Government is presently contemplating amendment exercise in the Registration Act, to ensure statutory support for the already enforced requirement. Therefore, it is obvious that as on date, the said statutory support is not available.

11. Under such circumstances, we hold that such insistence on obtaining of No Objection Certificate prior to registration of sale deeds is not legally sustainable. Accordingly, it is declared that the Registering Authorities under the Registration Act cannot be compelled to insist on No Objection Certificates prior to registration of sale deeds since such insistence is contrary to the provisions of the Registration Act. Once a particular deed fulfills the requirement of the provisions of the Registration Act, further impediment cannot be imposed on registration of such deeds though executive fiat by insistence on No Objection Certificates.

12. In view of above, this petition stands allowed and the respondent authorities are directed to act strictly in terms of the provisions of the Registration Act with regard to registration of deeds and documents. No registration is to be refused for documents which fulfill the requirements of the Registration Act by further insisting on No Objection Certificates, without necessary amendment of the law to lend legal support for such additional requirement. No costs.